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VIA ECF

Honorable Richard J. Sullivan
United States District Judge
United States District Court, Southern District of New York
40 Foley Square, Courtroom 905
New York, NY 10007

Re: ***Johnson v. National Football League Players Association, et al.***, Case No. 1:17-cv-05131-RJS

Dear Judge Sullivan:

The NFLPA did not see Plaintiff's portion of the Parties' Joint Submission (ECF No. 126 "Joint Submission") until minutes before it was filed yesterday.¹ In it, Johnson claims he may seek various damages under his LMRDA claim by citing to six cases. *Id.* at 1 n.1. None of these cases even references the only section of the LMRDA upon which Johnson bases his claim, *i.e.*, 29 U.S.C. § 414 ("Right to copies of collective bargaining agreements"). Instead, five of the six cases Johnson cites to concern 29 U.S.C. § 411 ("Bill of rights; constitution and bylaws of labor organizations") or 29 U.S.C. § 529 ("Prohibition on certain discipline by labor organization") and in particular union imposed discipline on a member.² In the sixth case that Johnson cites to, a

¹ The NFLPA requested that the parties exchange their respective portions of the joint submission prior to yesterday's filing in order to allow for the NFLPA to appropriately respond to Johnson's portion of the submission, but Johnson refused.

² *Local Union No. 38, Sheet Metal Workers' Int'l Ass'n v. Pelella*, 350 F.3d 73, 78-79 (2nd Cir. 2003) (claim brought by union member under 29 U.S.C. § 411 for violation of due process rights stemming from alleged wrongful discipline imposed by plaintiff's union); *Berg v. Watson*, 417 F. Supp. 806, 812-813 (S.D.N.Y. 1976) (claim brought under 29 U.S.C. § 411(a)(5) alleging improper disciplinary action by plaintiff's union; the court held that punitive damages are *only* available under the LMRDA when "bad faith" conduct is shown and a "substantial benefit is conferred by the suit on the other members of the union"); *Hall v. Cole*, 412 U.S. 1, 5-9 (1973) (claim brought under 29 U.S.C. § 411(a)(2) alleging that former union member's expulsion violated his free speech rights; the court noted that attorneys' fees are only available when the opposing party acted in "bad faith, vexatiously, wantonly, or for oppressive reasons" and "the interests of justice so require"); *Rosario v. Amalgamated Ladies' Garment Cutters' Union, Local 10, etc.*, 749 F.2d 1000, 1002-1003 (2nd Cir. 1984) (claim brought under 29 U.S.C. § 411 alleging that plaintiffs' union denied them a fair hearing in their appeal of a union issued suspension); *Quinn v. Di Giulian*, 739 F.2d 637 (D.C. Cir. 1984) (claim brought under 29 U.S.C. § 411 and 29

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discharged employee brought a Railway Labor Act claim against his former employer (not his union).³ These cases are not relevant and do not cast doubt on the Court's finding that damages are not available to a plaintiff alleging that his union failed to provide documents under 29 U.S.C. § 414.

Respectfully submitted,

/s/ Jeffrey L. Kessler

Jeffrey L. Kessler

U.S.C. § 529 alleging harassment by union officials, trumped-up union imposed disciplinary charges, fines and suspension, as well as improper discharge from the union).

³ *Hodges v. Virgin Atlantic Airways, Ltd.*, 714 F. Supp. 75, 76-77 (S.D.N.Y. 1988) (claim brought under 45 U.S.C. § 152 of the Railway Labor Act against plaintiff's employer (not his union) alleging wrongful discharge due to union activities).